



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0054; Notice 2]

Notice of Grant of Petition for Decision that Nonconforming Model Year 2019 Schuler Spezialfahrzeuge GmbH Trailer is Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration's (NHTSA's) grant of a petition for a decision that a model year (MY) 2019 Schuler Spezialfahrzeuge GmbH trailer that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) is eligible for importation into the United States because it is capable of being readily altered to conform with all applicable Federal Motor Vehicle Safety Standards (FMVSS).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202-366-1012).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A motor vehicle that was not originally manufactured to conform to all applicable FMVSS may be eligible for import into the United States if NHTSA determines that the motor vehicle is capable of being readily altered to conform to all applicable FMVSS. *See* 49 U.S.C. 30141(a). “[I]f there is no substantially similar United States motor vehicle,” NHTSA may determine that “the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence the

Secretary of Transportation decides is adequate.” *Id.* 30141(a)(1)(B). The term “motor vehicle” includes trailers that “are manufactured primarily for use on public streets, roads, and highways.” *See id.* 30102(a)(7). If NHTSA determines that a nonconforming vehicle is import eligible, any such nonconforming vehicle imported into the United States must be modified into conformance and certified as conforming by a registered importer before it is sold or otherwise released from the custody of the registered importer. 49 U.S.C. 30146(a)(1); 49 CFR 592.6.¹

Petitions for import eligibility decisions may be submitted by either manufacturers or registered importers and must comply with the requirements set forth in 49 CFR 593.6. A petition based on the capability of the vehicle to comply with all applicable FMVSS include, among other things, “data, views, and arguments demonstrating that the vehicle [which is the subject of the petition] has safety features that comply with or are capable of being modified to conform with such standard.” *Id.* 593.6(b)(2). “The latter demonstration [must] include a showing that after such modifications, the features will conform with such standard.” *Id.*

As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the *Federal Register* and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides whether the vehicle is eligible for importation based on the petition, its review of any comments received, and the agency’s own analysis. NHTSA will grant a petition for import eligibility if it “determines that the petition clearly demonstrates that the vehicle model is eligible for importation” and will deny the petition if it “determines that the petition does not clearly demonstrate that the vehicle model is eligible for importation.” 49 CFR 593.7(e)-(f). NHTSA then publishes its decision and the reasons for it in the *Federal Register*. *Id.*

¹ A registered importer is an importer that has registered with NHTSA under 49 CFR part 592 and is therefore authorized to modify and then certify imported vehicles as compliant with all applicable FMVSS.

II. DISCUSSION OF PETITION

Skytop Rover Co., Inc., (Registered Importer R-6-343), of Philadelphia, Pennsylvania has petitioned NHTSA to decide whether a nonconforming MY 2019 Schuler Spezialfahrzeuge GmbH trailer (the Subject Vehicle) is eligible for importation into the United States. Petitioner contends the Subject Vehicle's "safety features comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards." Petitioner states the Subject Vehicle "is a custom-built trailer made in Germany by Schuler Spezialfahrzeuge GmbH" and "there is no substantially similar trailer for comparison purposes."² Petitioner states the Gross Vehicle Weight Rating (GVWR) of the Subject Vehicle is 60,295 lbs. (27,349 kg).

Petitioner states that the Subject Vehicle "was developed and manufactured using 'off the shelf' DOT compliant components" and "has safety features which comply with or are capable of being modified to conform to all applicable Federal motor vehicle safety standards." Petitioner contends that the Subject Vehicle, as originally manufactured, complies with or is not subject to FMVSS Nos. 108 (Lamps, Reflective Devices and Associated Equipment), 119 (New Pneumatic Tires), 120 (Tire and Rim Selection), 121 (Air Brake Systems), 223 (Rear Impact Guards), and 224 (Rear Impact Protection).

With respect to FMVSS No. 108 (Lamps, Reflective Devices and Associated Equipment), Petitioner claims the vehicle meets all aspects of this standard and provided photographs of the lighting and retroreflective tape on the vehicle as equipped. These photographs, however, showed no retroreflective tape applied to the upper corners of the rear extremity of the vehicle as required under this FMVSS.

² Because the Subject Vehicle is a custom-built trailer, the grant of this import eligibility petition applies only to the Subject Vehicle and does not create a category of import eligible trailers or otherwise apply to any other trailers.

With respect to FMVSS No. 119 (New Pneumatic Tires), Petitioner claims and provided photographs demonstrating that the vehicle is equipped with tires that bear the relevant “DOT” markings/symbols and all required information for U.S. DOT certification.

With respect to FMVSS No. 121 (Air Brake Systems), Petitioner claims the vehicle meets all aspects of this standard and provided a test report detailing the service brake and park brake actuation and release timing. The test report showed results within the requirements for brake actuation specified for this FMVSS.

With respect to FMVSS Nos. 223 (Rear Impact Guards) and 224 (Rear Impact Protection), Petitioner claims the rearmost structural element of the trailer has a ground clearance of less than 22 inches and therefore is excluded from the requirements of a rear impact guard under FMVSS Nos. 224 and that FMVSS 223 therefore does not apply. Petitioner provided photographs depicting the measurements of the ground clearance of the rearmost structural member of the trailer that appear to support this claim.

Petitioner also contends that the Subject Vehicle is capable of meeting the requirements set forth in 49 CFR Part 565 (Vehicle Identification Number Requirements) and 49 CFR Part 567 (Certification) by affixing a certification label to the trailer on the “Left Front Half at Shoulder Height” that contains the VIN number of the Subject Vehicle.

III. PUBLIC COMMENTS

A Notice of Receipt of the Petition was published in the *Federal Register* for public comment for a period of 30 days. 86 FR 48476 (Aug. 30, 2021). No public comment was submitted in response to the Notice of Receipt.

IV. NHTSA’S ANALYSIS

A petition to determine import eligibility must include all information required under the applicable authorities and must also include data, views, and arguments demonstrating the

conclusions advanced by the petition. In this case, the Petition includes information demonstrating that the following FMVSS requirements are met by the Subject Vehicle as manufactured.

FMVSS No. 119 (New Pneumatic Tires) – Petitioner has shown the vehicle, as manufactured, is equipped with compliant tires, by direct inspection and submitted photographs depicting tires that bear the relevant “DOT” markings/symbols and all required information for U.S. DOT certification.

FMVSS No. 121 (Air Brake Systems) – Petitioner has shown the vehicle, as manufactured, is equipped with a compliant braking system, by direct inspection, submitted photographs, and a service brake and park brake actuation and release timing test report, which demonstrated that the results are within the required specifications for compliance.

FMVSS Nos. 223 (Rear Impact Guards) and 224 (Rear Impact Protection) – Petitioner has shown the vehicle meets the definition of a “[l]ow chassis vehicle” and is excluded from requiring a rear impact guard per the requirements of FMVSS No. 224 and that FMVSS No. 223 is therefore not applicable to the Subject Vehicle, by submitting photographs depicting a ground clearance of the rear most structural member within 12 inches of the rear of the trailer to be less than 22 inches above ground.

Petitioner also demonstrated that the Subject Vehicle, as manufactured, is capable of being modified to conform to FMVSS No. 108 (Lamps, Reflective Devices and Associated Equipment). Although Petitioner failed to demonstrate the Subject Vehicle meets the requirements for retroreflective tape on the back of the vehicle, NHTSA concludes that the vehicle is capable of being modified to meet these requirements with the addition of retroreflective tape in the location specified in the standard. Petitioner has shown the Subject Vehicle meets all other lighting and conspicuity requirements of the standard, by submitting photographs depicting the DOT marking of the compliant lamps and the location of other retroreflective tape.

Additionally, and as stated by Petitioner, the Subject Vehicle will need to be modified to conform to the requirements set forth in 49 CFR Part 565 (Vehicle Identification Number Requirements) and 49 CFR Part 567 (Certification) by affixing a safety certification label to the trailer on the “Left Front Half at Shoulder Height” that contains the VIN number of the vehicle.

V. AGENCY DECISION

Petitioner has demonstrated that the Subject Vehicle is either compliant with or capable of being readily altered to comply with all applicable FMVSS, and the petition is therefore granted.

Authority: 49 U.S.C. 30141(a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Joseph Kolly,

*Acting Associate Administrator
for Enforcement.*

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